THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.22174 of 2006

ORDER:

The petitioner claims to be a society registered under the Societies Registration Act, with an object to look after the welfare of Kapus/Telagas/ Balijas and Ontaris, which have different caste names in different parts of the State of Andhra Pradesh.

This writ petition is filed seeking a declaration that the action of the 1st respondent in not conducting an enquiry on the representations made by the petitioner-Society for inclusion of the communities of Kapus/Telagas/ Balijas and Ontaris in backward class list and in not submitting a report though more than 10 years have elapsed as improper and unconstitutional.

I have heard the learned counsel for both the parties.

The 1st respondent-Commission was constituted by the State Government under the Andhra Pradesh Commission for Backward Classes Act, 1993, (for short "Act 20 of 1993"). Under Section 9 of the Act, the Commission is empowered to examine the request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such list and tender such advice to the Government, as it deems appropriate. The Commission is also empowered to make recommendations on any other matter relating to the backward classes that may be referred to it by the Government from time to time. Sub-section (3) of Section 9, which was inserted by the Amendment Act 16 of 1995, has also empowered the Commission to make an interim report in regard to any Castes or Classes in whose cases urgent action in the opinion of the Government is necessary. However, any action basing on such interim report would be subject to the final report of the Commission. Sub-section (4), inserted to Section 9 under the Amendment Act 2 of 1997, empowers the Commission to enquire into

specific complaints with respect to non-observance of the rule of reservation in the matter of appointments to posts/services under the Government and other local authority.

It is relevant to note that under Section 11 of the Act, the Government may at any time, and shall at the expiration of ten years from the coming into force of the Act i.e., Act 20 of 1993, and every succeeding period of ten years thereafter, shall undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes. Sub-section (2) of Section 11 has expressly provided that while undertaking such revision, the Government shall consult the Commission.

It is pleaded by the petitioner that there is a demand from Kapu community to include them in the list of backward classes and it is a long pending request. Right from the year 1994, several requisitions have been made by the Kapu community individually and through Associations. The petitioner-Society made a detailed representation on 2.9.1996 requesting the Commission to conduct enquiry and include Kapu community in the list of backward classes, followed by representations dated 4.2.2004, 7.11.2004; 30.1.2005 and 12.3.2005. It is alleged that in spite of such representations, the request of Kapu community has not been considered so far.

Hence, this writ petition contending *inter alia* that the inaction on the part of the 1st respondent in exercising its power under Section 9 of Act 20 of 1993 is arbitrary and unconstitutional. It is further contended that the 1st respondent is under an obligation to conduct an enquiry and submit a report to the Government to take a decision with regard to inclusion of Kapus/Telagas/ Balijas and Ontaris in Backward Classes as provided under sub-section (1) of Section 11 of the Act.

A counter-affidavit has been filed on behalf of the 2nd respondent stating that there are 112 castes including Kapus/Telagas/ Balijas and Ontaris, who sought for inclusion in the list of Backward Classes and

the 1st respondent is actively engaged in making enquiry so as to submit its reports. So far no report has been submitted by the 1st respondent on the request of the petitioner. The 1st respondent-Commission after considering various factors, decided in its meeting held on 22.3.2006 to regulate its procedure and resolved to take up certain castes on common criteria and consider them one by one, in stead of taking up all the castes at a time to give a comprehensive report. The Commission further resolved to consider those Castes which have already been recognised as OBCs by National Commission for Backward Classes and not found in the State List and also those classes which are less in population/confined to local areas as a first step. Basing on the above criteria, representations/suggestions/objections were called for with regard to 36 castes to examine their requests for inclusion in the list of B.Cs and public hearing was held from 15.5.2006 to 25.5.2006 to hear their claims. Subsequently, the commission took up local investigation/enquiry, which is under progress and is likely to be completed in about six months. After considering the said 36 castes already notified, the 1st respondent will be in a position to take up the claims of other castes including Kapus/Telagas/ Balijas and Ontaris. Hence, the alleged inaction on the part of the respondents to consider the request of the petitioner-society for inclusion of Kapu caste in B.C. list is incorrect and without any basis.

From the averments in the counter-affidavit, it is clear that further steps on the basis of the petitioner's representations are under process. It is a matter of record that the Commission had also issued G.O.Ms.No.30, BCW (P2) Department, dated 25.8.1994, recognizing Kapus/Telagas/ Balijas and Ontaris as socially and educationally backward classes of citizens for the purpose of reservation of seats in educational institutions and for recruitment to jobs in Government, Local Bodies etc., pending receipt of report from the 1st respondent-

Commission. Challenging the said order, W.P.No.154897 of 1997 and batch was filed, which was disposed of by this Court holding that the impugned G.O. was not amenable for challenge on the ground of violation of the provisions of Act 20 of 1993.

However, it is pleaded by the petitioner that the benefits of G.O.Ms.No.30 dated 25.8.1994, could not be given to the community, since the said G.O. was not given effect to.

Be that as it may, as rightly contended by the learned senior counsel appearing for the petitioner, periodical revision of list of backward classes is mandatory under Section 11 of the Act. Sub-section (1) of Section 11 provides that such revision has to be done at the expiration of 10 years from coming into force of the Act and every succeeding period of 10 years thereafter. Though more than ten years elapsed from the enforcement of Act 20 of 1993, admittedly, such revision could not be completed. In the circumstances, the representations made by the petitioner-Society require to be considered following the procedure prescribed under the Act 20 of 1993.

Accordingly, the writ petition is disposed of with a direction to the 2nd respondent to consider the representations of the petitioner-Society for inclusion of Kapus/Telagas/ Balijas and Ontaris communities in backward class list and pass appropriate orders in accordance with law in accordance with the procedure prescribed under Act 20 of 1993 expeditiously.

G. ROHINI, J.

5th January, 2007.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.22174 of 2006

5th January, 2007.

Between:

KAPUNADU (registered) Kapu, Balija,
Telaga, Ontari Samstha, Plot No.303, Bhavya Krishna Residency,
Red Hills, Lakdi-ka-pul, Hyderabad,
represented by its Founder-cum-Chairman, Miryala
Venkat Rao. .. Petitioner.

And

Andhra Pradesh Commission for Backward Classes,
8th FIlor, Chandravihar, Mohamjahee road,
Hyderabad, represented by its Chairman and another. ..
Respondents.